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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,520	04/14/2004	Jerald C. Seelig	619.897	6587

21707 7590 01/09/2007  
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EXAMINER
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MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/824,520

Applicant(s)

SEELIG ET AL.

Examiner

Robert Mosser

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims **1-6, 8, 10-17, 28-30, 34, and 36** are rejected under 35 U.S.C. 102(e) as being anticipated by Baerlocher et al (US 6,315,664).

Claims **1-3, 12, 15, 16, and 34**: Baerlocher teaches a gaming system including a base game that randomly generates a bonus-qualifying event (See Col 2:34-42), and a bonus game. The bonus game including a game outcome founded on a plurality of binary results conveyed through two different indicia (See Col 2:43-64, & Figures 3 and 4) and awarding a prize to the player based on a number of winning outcomes (See Col 7:54-59).

Claim **4**: Baerlocher teaches entitling the player to a predefined payout based on a number of binary outcomes being displayed (See Col 6:44-51).

Claims **5-6, and 13**: Baerlocher teaches the inclusion of a display object containing two different indicia (See Figures 4, 5, & Col 3:15-22).

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**Claims 8, 14, and 30:** Baerlocher teaches that each display object is capable of displaying at least two different indicia (See Figure 4, & Col 5:59-6:10)

**Claims 10-11, 17, 28, and 36:** Baerlocher teaches the use of a touch screen video display in communication with a controller to allow the player to select success indicators as defining a winning outcome (See Col 4:66-5:5).

**Claim 24:** Baerlocher teaches disregarding a failure outcome result determination for a success determination if a relatively high number for failure determination have been made to avoid player frustration (See Col 7:3-10).

**Claim 29:** Baerlocher teaches the inclusion of value acceptors (See Col 4:11-18), player input devices (See Col 4:19-22), and a controller for determining the randomly decided game outcomes (See Elm 36, & Col 5:61-6:10).

**Claims 12-23, 25-27, and 29-35** are rejected under 35 U.S.C. 102(b) as being anticipated by Gutknecht (US 5,154,420).

**Claims 12, and 29:** Gutknecht teaches allowing a player to place a wager and play a game of chance (See Col 1:59-2:5), determining a plurality of binary game outcomes (See Figure 1, Elm 54, 58), a coin/value acceptor to accept wagers (See Elm 44), a plurality of player input devices (See Col 2:53-65), a controller for randomly determining a game outcome (See Col 5:7-24), a display for displaying the plurality of binary game outcomes to the player, and awarding the player a payout based on a winning outcome (See Figure 1 & Col 1:59-2:5).

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Claims 13-18, 26-27, and 30-35: Gutknecht teaches displaying of the two possible game outcomes to the player for each game object during the determination of the game outcome through the rotation of the game objects and allowing the player to select which indicator on each object will serve as the winning indicator (See Col 1:61-2:5).

Claims 19-23, and 25: Gutknecht teaches use of a "triple or nothing" game feature for allowing a player wager a first prize for a large secondary prize comprising a multiple of the first prize and dependent on multiple binary game outcomes (See Figure 1, & Col 2:66-3:2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 7, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baerlocher et al (US 6,315,664).

Baerlocher is silent regarding each display object representing a coin, however Baerlocher teaches that the particular appearance of the display object utilized for enacting the bonus game as taught above as being immaterial to Baerlocher's invention and such The display objects of Baerlocher could be widely varied sizes, shapes and colors.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to utilize a display objects resembling coins in the game of Baerlocher because, one of ordinary skill in the art at the time of invention would have recognized that the embodiment of the display object is immaterial to the to the invention as taught by Baerlocher. One of ordinary skill in the art, furthermore, would have expected the display objects of Baerlocher representing boxes and/or dodge ball players (See Figures 4-5), and the Applicant's claimed display object resembling a coin to perform equally well as both methods would serve to convey he result of a binary game outcomes.

Therefore it would have been prima facie obvious to modify Baerlocher in order to obtain the invention as specified in claim(s) 7, because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Baerlocher.

### ***Conclusion***

The following prior art is made of record and though not presently relied upon is considered pertinent to applicant's disclosure.

*GB 2,169,737 Orr teaches a wager based gaming device.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MARK SAGER  
PRIMARY EXAMINER

December 30<sup>th</sup>, 2006

REM

